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In re Application of BUI et al
U.S. Application No.: 10/560,558
PCT Application No.: PCT/US2004/018380
Int. Filing Date: 10 June 2004
Priority Date Claimed: 13 June 2003
Attorney Docket No.: 30915-701.831
For: NUTRACEUTICAL FOR THE
PREVENTION AND TREATMENT OF
CANCERS AND DISEASES AFFECTING
THE LIVER

DECISION

This is in response to the correspondence filed 14 March 2008, which is being treated as a petition under 37 CFR 1.181.

BACKGROUND

On 10 June 2004, applicant filed international application PCT/US2004/018380, which claimed priority of an earlier United States application filed 13 June 2003. The thirty-month period for paying the basic national fee in the United States expired on 13 December 2005.

On 12 December 2005, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 22 November 2006, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 27 December 2006, applicant filed a request for status under 37 CFR 1.42 along with an executed declaration.

On 19 July 2007, this Office mailed a decision dismissing the 27 December 2006 request for status.

On 27 August 2007, applicant purportedly filed a renewed request for status along with an executed declaration.

On 14 March 2008, applicant filed the present petition under 37 CFR 1.181.

DISCUSSION

I. Petition under 37 CFR 1.181

The evidence of record is sufficient to establish that the renewed request for status and declaration were originally filed on 27 August 2007. Specifically, the copy of the return postcard, which includes the renewed request for status and declaration in its itemized contents and which bears a USPTO date stamp of 27 August 2007, serves as prima facie evidence that the renewed request and declaration for status were received by the USPTO on 27 August 2007.

II. Renewed Request for Status under 37 CFR 1.42

37 CFR 1.42 provides, "In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent."

Effective 07 November 2000, 37 CFR 1.497(b)(2) specifies that, where a person making the declaration is the legal representative of a deceased inventor, the declaration shall state the following: (1) the relationship of the person to the inventor, (2) the facts the inventor would have been required to state, upon information and belief, (3) that the person is the legal representative of the deceased inventor, and (4) the citizenship, residence, and mailing address of the legal representative.

The declaration filed 27 August 2007 is improper because it fails to list all of the inventors as required by 37 CFR 1.497(a)(3).

CONCLUSION

For the reasons in §I above, the petition under 37 CFR 1.181 is GRANTED.

For the reasons in §II above, the renewed request for status under 37 CFR 1.42 is DISMISSED without prejudice.

If reconsideration on the merits of the request is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file a proper response will result in ABANDONMENT of the application. Extensions of time are

available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Request for Status Under 37 CFR 1.42".

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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